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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,674	11/10/2003	Richard B. Himmelstein	HIM-PT008.4	4667
3624	7590	08/29/2005	EXAMINER	
VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			DAGOSTA, STEPHEN M	
			ART UNIT	PAPER NUMBER
			2683	

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/705,674

**Applicant(s)**

HIMMELSTEIN, RICHARD B.

**Examiner**

Stephen M. D'Agosta

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Preliminary Amendment*

The primary examiner acknowledges the preliminary amendment which cancelled claims 1-21 and renumbered the claims as 22-56.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 22-24, 30-32, 37-38, 45-47 and 52** rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger et al. US 6,199,045 above, and further in view of Cragun US 6,177,873.

As per **claims 22-24, 30-32, 37-38, 45-47 and 52**, Giniger teaches a method alerting a user to an emergency situation (C5, L39-46) via a mobile using (title, abstract teach providing position-related information to a user, eg. an alert), comprising the steps of:

locating the position of the mobile unit (C1, L5-47 and C2, L54-57 teach determination of a user's location);

sending a communication to the mobile unit depending upon the location of the mobile unit (C1, L5-47 teaches sending certain types of data to a user based on their location);

**but is silent on** determining a priority of the communication; and  
alerting the user of the communication via the mobile unit if the priority level

of the communication indicates an emergency situation.

Giniger does disclose that the information sent to the user is based on their “user preferences” (abstract), which the examiner interprets as the setting of priority levels in the device.

Cragun teaches a weather warning apparatus (title) which sends alerts to a user based on their location (abstract, figure 1) whereby the user can set a priority as to when said user should be alerted and when the alert should be ignored (figure 4, #420, #424, #426 and C5, L33 to C6, L18 teaches setting an alert level and only notifying the user if there is an emergency or not, eg. if there is a warning, watch&warning, storm or an emergency – see figure 1, #166 to #169).

***With further regard to claim 52***, Giniger teaches a system which uses geographical information to inform a user(s) of information relating to their position (title, abstract, figure 1) which uses transmitters, mobiles, receivers and position determining (abstract and C1, L5 to 67).

It would have been obvious to one skilled in the art at the time of the invention to modify Giniger, such that it determines a priority of the communication and alerts the user of the communication via the mobile unit if the priority level of the communication indicates an emergency situation, to provide to the user to have priority-setting means for them to set a level as to when they want to be notified of an emergency.

As per **claims 23, 31, 39 and 47**, Giniger teaches claim 22/30/37/45 wherein the mobile unit includes a global positioning system receiver and the locating step includes using the receiver to locate the position of the mobile unit (figure 1 shows GPS satellites and figure 4, #401/#403 shows GPS receiver on the receiver device).

As per **claims 24, 32, 40 and 48**, Giniger teaches claim 22/30/45 includes sending the communication to one or more specifically targeted mobile units (C1, L5-67 teaches sending location-related data to at least one device based on their location).

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As per **claims 26, 34, 41 and 49**, Giniger teaches claim 22/30/37/45 wherein the alerting step includes playing a sound at the mobile unit (C1, L30-47 and C2, L35-40 teaches the receiver device playing audio to the user based on their location. While this is not an emergency alert, Giniger does teach emergency situation, C5, L39-46, whereby an alert would play an audio sound).

As per **claims 27, 35, 42 and 50**, Giniger teaches claim 22/30/37/45 wherein the alerting step includes displaying a visual indicator on the mobile unit (C1, L40-42 and C2, L35-40 teaches the receiver device playing video to the user based on their location. While this is not an emergency alert, Giniger does teach emergency situation, C5, L39-46, whereby an alert would play a video on a display).

**Claims 25 and 33** rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger/Cragun and further in view of Baron et al. US 6,018,699.

As per **claims 25 and 33**, Giniger teaches claim 22/30/37 **but is silent on** wherein the communication includes a header and the determining step includes examining the header to determine the priority level of the communication.

Cragun teaches a weather warning apparatus which sends alerts to a user based on their location (abstract, figure 1) whereby the user can set a priority as to when said user should be alerted and when the alert should be ignored (figure 4, #420, #424, #426 and C5, L33 to C6, L18 teaches setting an alert level and only notifying the user if there is an emergency or not, eg. if there is a warning, watch&warning, storm or an emergency – see figure 1, #166 to #169). While Cragun does not specifically mention the device examining the header to determine priority level, the primary examiner interprets Cragun as “examining” data (eg. a data field/header) transmitted to the receiver which is used to determine if the message is of a certain priority level and if it should alert the user based on said user’s priority-level setting.

Baron teaches informing users of weather information whereby a “data structure” similar to a header is used to convey the storm information (C7, L35 –67 shows a header-like format).

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It would have been obvious to one skilled in the art at the time of the invention to modify Giniger, such that wherein the communication includes a header and the determining step includes examining the header to determine the priority level of the communication, to provide means for the system to read overhead data which is used to understand the priority level of the message.

**Claims 28 and 43** rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger/Cragun and further in view of Grothause US 5,170,499.

As per **claims 28 and 43**, Giniger teaches 22/37 wherein the mobile unit is installed in a vehicle (C2, L20-30 teaches the mobile unit being installed in a vehicle/bus) **but is silent on** the alerting step includes reducing the volume of a radio in the vehicle to alert the user of the communication.

Grothause teaches adjusting the volume of a radio (abstract) whereby " Some radios have attempted to compensate for this detriment by including visual indicators that are illuminated when a call is received. However, this requires the operator to be attentive to the visual indication on the radio. In some situations, dividing the attention of a radio operator may be inappropriate or dangerous to the radio user or others. Accordingly, a need exists for a method to insure that the volume of a radio is adequately adjusted to facilitate communication." (C1, L40-50)

It would have been obvious to one skilled in the art at the time of the invention to modify Giniger, such that the alerting step includes reducing the volume of a radio in the vehicle to alert the user of the communication, so that the user can properly hear the alert.

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**Claims 29, 36, 44 and 51** rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger/Cragun and further in view of Moroto US 5,389,824.

As per **claims 29, 36, 44 and 51**, Giniger teaches 22/30/37/45 **but is silent on** wherein the mobile unit is installed in a vehicle and the alerting step includes controlling the vehicle to avoid the emergency situation.

Moroto teaches detecting and avoiding an emergency (eg. collision) situation:

" ...The CPU of the diagnosis section 64 monitors an abnormal approach state between the electrical vehicle and an obstacle such as another vehicle (step 1). The abnormal approach state is determined by checking, based on the speed signal e4 and the distance signal L supplied from the corresponding distance measurement sensor 63 whether or not an obstacle has approached within a predetermined distance corresponding to the speed of the electrical vehicle. If the abnormal approach state is determined in step 1 (step 1; Y), the diagnosis section 64 outputs the emergency brake signal 66, and the vehicle is automatically braked by the emergency brake 62 (step 2)..." (C7, L47-60).

It would have been obvious to one skilled in the art at the time of the invention to modify Giniger, such that the mobile unit is installed in a vehicle and the alerting step includes controlling the vehicle to avoid the emergency situation, to provide automatic control of the vehicle if/when the system determines it needs to avoid an emergency situation.

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**Claims 38 and 46** rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger/Cragun and further in view of James US 5,420,794.

As per **claims 38 and 46**, Giniger teaches claim 30/45 **but is silent on** wherein the communication is selected from the group consisting of: an approaching emergency vehicle, an accident scene, road conditions, a traffic signal, traffic conditions, and weather conditions.

Giniger does teach alerting the user to emergency conditions (C5, L39-46).

Cragun teaches alerting a user to weather emergencies/warnings (title, abstract).

James teaches a position-tracking system supporting a vehicle that "...has a user interface whereby the vehicle's occupant can be informed of road, weather, traffic conditions, other user services..." .

(abstract).

It would have been obvious to one skilled in the art at the time of the invention to modify Giniger, such that the communication is selected from the group consisting of: an approaching emergency vehicle, an accident scene, road conditions, a traffic signal, traffic conditions, and weather conditions, to provide means for alerting the user of many different situations which can assist the user to avoid problems while driving.

**Claim 53** rejected under 35 U.S.C. 103(a) as being unpatentable over Giniger and further in view of Baron et al. US 6,018,699.

As per **claim 53**, Giniger teaches a method for outputting advisory information (C5, L39-46), the steps of:

reading position data using a positioning system of the mobile unit and determining at least ONE of location (C1, L5-47 and C2, L54-57 teach determination of a user's location), [direction and speed of a user];

sending a communication to the mobile unit depending upon the location of the mobile unit (C1, L5-47 teaches sending certain types of data to a user based on their location);



**but is silent on** receiving information about a group of targeted users, determining whether the selected user is in the group of targeted users and outputting advisory information if the selected user is in the group of targeted users.

Baron teaches distributing real-time site specific weather information to certain users in an area (abstract) whereby only those user(s) who have a “storm profile” are notified (figures 4-5 and C7, L64 to C8, L28), which reads on the claim. C8, L20-28 teaches a user can sign-up to receive information, hence not all users will receive the weather information and therefore the system “receives information about a group of targeted users” and can “determine whether the selected user is in the group of targeted users and outputting advisory information if the selected user is in the group of targeted users”, eg. one who should receive storm information.

It would have been obvious to one skilled in the art at the time of the invention to modify Giniger, such that it receives information about a group of targeted users, determines whether the selected user is in the group of targeted users and outputs advisory information if the selected user is in the group of targeted users, to provide means for sending a location-specific alert to a subset of users in a certain area.

**Claim 54** rejected under 35 U.S.C. 103(a) as being unpatentable over Wicks and further in view of Rudrapatna et al. US 6,052,598 and Layson Jr. US 5,982,281.

As per **claim 54**, Wicks teaches teaches a method for selectively distributing information based on positional factors (abstract teaches sending nightlife data based on “..a particular area where the subscriber’s pager is determined to be”), comprising the steps of:

receiving geographical locations of a plurality of mobile units (C2, L64-67),, the geographical locations being determined by using a global positioning system (GPS is a well-known location determining system and would be used by one skilled in the art along with other wireless techniques such as AOA, TDOA, etc.);

selecting the mobile units that should receive the information based on the geographical location of each mobile unit (C5, L60 to C6, L2 teaches sending nightlife information based on the subscriber’s location) and

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transmitting the information to the selected mobile units (abstract teaches sending nightlife information to mobile unit(s)),

**but is silent on**

determining at least one of a speed and direction of each mobile unit; and the information including an indicator of which mobile units are selected mobile units and transmitting the information only to the selected mobile units.

Rudrapatna teaches use of GPS (C1, L23-33) and determination of a mobile's speed and direction (abstract). Hence one skilled would use Rudrapatna's speed/direction calculations to determine if a user (in the Wicks system) should receive a nightlife info-message if then are near a certain nightspot and/or moving away from said nightspot (in which case the message won't be sent).

Layson teaches a system whereby a person/victim (and the police) are notified if another person/offender approaches said victim (abstract). The system notifies both the victim and the police which reads on "the information including an indicator of which mobile units are selected mobile units and transmitting the information only to the selected mobile units". The examiner also notes that sending a broadcast email reads on the claim as well since it shows who received the message.

It would have been obvious to one skilled in the art at the time of the invention to modify Wicks, such that it determines at least one of a speed and direction of each mobile unit and the information including an indicator of which mobile units are selected mobile units and transmitting the information only to the selected mobile units, to provide means for identifying the direction of a user and which units/users should be notified.

**Claim 55** rejected under 35 U.S.C. 103(a) as being unpatentable over Wicks and further in view of Rudrapatna.

As per **claim 55**, Wicks teaches a method for selectively distributing information based on positional factors (abstract teaches sending nightlife/advertisement data to a user based on "...a particular area where the subscriber's pager is determined to be"), comprising the steps of:

receiving geographical locations of a plurality of mobile units (C2, L64-67), the geographical locations being determined by using a global positioning system (GPS is a well-known location determining system and would be used by one skilled in the art along with other wireless techniques such as AOA, TDOA, etc.);

selecting the mobile units that should receive the information based on the geographical locations of each mobile unit (C5, L60 to C6, L2 teaches sending nightlife information based on the subscriber's location) and

transmitting the information to the selected mobile units (abstract teaches sending nightlife information to mobile unit(s)),

**but is silent on** determining at least speed or direction of each mobile unit.

Rudrapatna teaches use of GPS (C1, L23-33) and determination of a mobile's speed and direction (abstract). Hence one skilled would use Rudrapatna's speed/direction calculations to determine if a user (in the Wicks system) should receive a nightlife info-message if then are near a certain nightspot and/or moving away from said nightspot (in which case the message won't be sent).

It would have been obvious to one skilled in the art at the time of the invention to modify Wicks, such that determining at least one of a speed and direction of each mobile unit, to provide means for determining if a user will be in an area for a while based on their direction of travel and if so, sending a message (if not, don't send).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claim 56** rejected under 35 U.S.C. 102(e) as being anticipated by Wicks.

As per **claim 56**, Wicks teaches a system distributing advertisements users (abstract teaches sending nightlife advertisements to a user), comprising:

a mobile unit carried by the user, said mobile unit including profile data that characterizes the user (abstract teaches a user profile, figure 3 shows subscriber profile database, #44. Also see C4, L6-13.);

at least one geographically distributed base station (figure 3 shows BTS #43);

a communication network coupled to said at least one geographically distributed BTS (figure 3 shows BTS connected to a paging system via communications link to central processor #46), the communications network providing at least one advertisement categorized by generic user characteristics (C4, L6-13 teaches sending advertisements based on the user's profile);

said mobile unit sending a signal identifying the user to said communication network through said at least one BTS (C5, L60 to C6, L2 teaches determining the location of the pager whereby the network must be able to receive and identify the pager device. A cellular system uses the registration process to identify and authenticate a user, storing profile and location data in the HLR/VLR), and

said communication network selecting an advertisement based upon the received user identification signal and the generic user characteristics, said communication network sending the selected advertisement to said mobile unit via said at least one base station (C5, L60 to C6, L2 teaches sending a selected advertisement

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based on the location of the user while C4, L6-13 teaches sending advertisements based on the user's preferences).

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Marrah et al. US 6,526,268
2. Fernandez et al. US 5,740,532
3. Jacobson et al. US 6,466,796
4. Rosen et al. US 6,014,090

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. D'Agosta whose telephone number is 571-272-7862. The examiner can normally be reached on M-F, 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bill Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stephen D'Agosta  
Primary Examiner  
8-22-2005

